

Appendix A

Sample Letters/Checklists/Sample Narratives

The following items are sample letters for use and other supplemental materials referred to in Chapters I through IV. The general reference is noted in order to guide the reader as to the location of the topic.

SAMPLE LETTER Complaint Notification to Employer Type 1

Re: Complaint No.

Dear :

On _____ the Virginia Occupational Safety and Health Administration (VOSH) received notice of safety and health hazards at your worksite. We notified you, by telephone, of these alleged hazards on _____. The specific nature of the alleged hazards is as follows:

(Insert list of items.)

We have not determined whether the hazards, as alleged, exist at your workplace; and we do not intend to conduct an inspection at this time. However, since allegations of violations have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than _____ of the results of your investigation. You must provide supporting documentation of your findings, including any applicable measurements or monitoring results, and photographs which you believe would be helpful, as well as a description of any corrective action you have taken or are in the process of taking.

This letter is not a citation or a notification of proposed penalty which, according to the VOSH Act may be issued only after an inspection of the workplace. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. We encourage employee participation in investigating and responding to any alleged hazard. If we do not receive a response from you by _____ indicating that appropriate action has been taken or that no hazard exists and why, a VOSH inspection will likely be conducted. An inspection may include a review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout/tagout and related safety and health issues.

Please note, however, that VOSH selects for inspection some cases where we have received letters in which employers have indicated satisfactory corrective action. This is to ensure that employers have actually taken the action stated in their letters.

The State of Virginia offers VOSH consultation services without charge, to assist in resolving all occupational safety and health issues. However, the variety of services available or the scheduling of those services may be limited by the consultation project's requirement to give priority to small businesses in high hazard industries and by its backlog. To discuss or request the services call the following number:

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees and return a copy of the signed Certificate of Posting (Attachment A) to this

Appendix A- 2

office. In addition, you are requested to provide a copy of this letter and your response to a representative of any recognized union or safety committee if these are at your facility. Failure to do so may result in an on-site inspection.

The complainant has been furnished a copy of this letter and will be provided a copy of your response. The VOSH Act provides protection for employees against discrimination because of their involvement in protected safety and health activity.

If you have any questions concerning this matter, please contact _____ at the address in the letterhead. Your personal support and interest in safety and health of your employees is appreciated.

Sincerely,

Attachment A

**CERTIFICATE OF POSTING
VOSH NOTIFICATION OF ALLEGED HAZARD(S)**

Complaint No. _____

Date of Posting: _____

Date Copy Given to an
Employee Representative: _____

On behalf of the employer, I certify that a copy of the complaint letter received from the Virginia Occupational Safety and Health (VOSH) Program has been posted in a conspicuous place, where all affected employees will have notice, or near such location where the alleged hazardous condition(s) occurred, and such notice has been given to each authorized representative of affected employees, if any. This notice was or will be posted for a minimum of ten (10) working days or until any hazardous conditions found are corrected.

Signature

Title

Employer/Establishment Name

SAMPLE LETTER Complaint Notification to Employer Type 2

Date

Company

Attn:

Street

City, State Zip

Re: Complaint No.

Dear :

On _____, the Virginia Occupational Safety and Health Division (VOSH) received a notice of alleged unsafe conditions at your worksite. (Street address, City, State Zip). We notified you by telephone of these alleged hazards on _____. The specific nature of the alleged hazards is as follows:

(Insert list of items.)

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection at this time. However, since allegations of violations have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications within (5) five calendar days from receipt of this notification by telephone. **Give the date when the corrective action was actually COMPLETED and give a brief statement explaining what corrective actions were made.** NOTE: When responding, if your corrective actions for any given complaint item cannot be completed until a future date - due to ordering parts, repair contracts, etc. - then we will need a follow-up letter from you confirming completion of abatement on the affected item(s). You should also provide supporting documentation of your actions including receipts, repair bills, any photographs/video, etc. which you believe would be helpful in confirming your abatement actions. If you believe a complaint item is not valid then please state why. To facilitate providing our department with a timely response you may, if desired, fax your response to us at _____ (fax number).

This letter is not a citation or a notification of proposed penalties. Our goal is to ensure that hazards are promptly identified and eliminated. We also encourage employee participation in investigating and responding to any alleged hazard. **However, if we do not receive a written response from you by (5 calendar days) indicating that appropriate action has been taken or that no hazard exists and why, a VOSH inspection may be conducted.** An inspection may include a review of the following: injury and illness records and any required programs such as hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout/tagout, and other related safety and health

Appendix A - 5

issues.

The State of Virginia offers VOSH consultation services, without charge, to assist in resolving all occupational safety and health issues. The variety of services available or the scheduling of those services may be limited by the consultation project's requirement to give priority to small businesses in high hazard industries and by its case backlog. You may also be able to obtain similar services from your insurance carrier or private consultant. To discuss or request the services call or write _____, Supervisor, Consultation Services, Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219, _____.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by all of your employees and to return a copy of the signed Certificate of Posting (Attachment A enclosed) to this office. Also, you are requested to provide a copy of this letter and your response to it to a representative of any recognized employee union or safety committee if these are at your facility. Failure to do this may result in an on-site inspection. A copy of this letter and your response may also be furnished to the complainant.

Note that Section 40.1-51.2:1 of the Virginia Labor Laws states that no persons shall discharge or in any way discriminate against an employee/s because the employee/s has filed a safety or health complaint or has testified or has otherwise acted to exercise his/her rights under the safety and health provisions under this Title for themselves or others.

If you have any questions concerning this matter, please contact this office. Your personal support and interest in the safety and health of your employees is appreciated.

Sincerely,

Compliance Manager
Virginia Occupational
Safety and Health

Enclosure: Attachment A

**CERTIFICATE OF POSTING
VOSH NOTIFICATION OF ALLEGED HAZARD(S)**

Complaint No. _____

Date of Posting: _____

Date Copy Given to an
Employee Representative: _____

On behalf of the employer, I certify that a copy of the complaint letter received from the Virginia Occupational Safety and Health (VOSH) Program has been posted in a conspicuous place, where all affected employees will have notice, or near such location where the alleged hazardous condition(s) occurred, and such notice has been given to each authorized representative of affected employees, if any. This notice was or will be posted for a minimum of ten (10) working days or until any hazardous conditions found are corrected.

Signature

Title

Employer/Establishment Name

SAMPLE LETTER -- Initial Response to Complainant Type 1

Re:

Dear :

The purpose of this letter is to acknowledge receipt of your complaint and to inform you that an inspection of this workplace will be scheduled as soon as possible, in accordance with the priorities established by the agency. You will be informed of the results of our inspection when they are available.

Section 11 (c) of the VOSH Act provides protection for employees against discrimination because of their involvement in protected safety or health related activity. If you believe that you are being treated differently or action is being taken against you because of your safety or health activity, you may file a complaint with VOSH. You should file this complaint as soon as possible, since VOSH normally can accept only those complaints filed within 30 days of the alleged discriminatory action.

Thank you for your interest in workplace safety and health.

Respectfully,

SAMPLE LETTER Initial Complaint Response Type 2

Date:

Name

Address

City, State Zip

Dear :

In response to your complaint concerning safety/health hazards at - *Name of Company* - , the Virginia Occupational Safety and Health (VOSH) Program conducted an inspection at the location detailed in the complaint. The inspection was finalized on - *enter Date Complaint is Closed, Citations Were Issued, or No Citations Issued* - and the results of our investigation of your complaint are as follows:

Examples - of different scenarios:

:

Item 1. Employees performing welding operations are exposed etc., etc., etc.

Findings: This complaint item was confirmed. The employees performing the welding wereetc., etc., etc. This item was cited as detailed in the attached copy of the citation.

Item 2: Etc., etc

Findings: This complaint item was partially confirmed but was determined not to be a violation of the VOSH standards. The employees performingetc., etc., etc.

Item 3: Etc., etc.

Findings: This complaint item was not confirmed. The employees performingetc., etc., etc.

Item 4: Etc., etc.

Findings: This complaint item could not be *confirmed or documented* at the time of the inspection. The employees performingetc., etc., etc.

If the **initial** complaint had **both safety and health items** and these were divided **between** two separate inspections -one addressing the safety items and one addressing health items, **address the items you inspected as detailed above** and then use the following paragraphs to address the items on the companion inspection depending on the circumstances. (Note: Don't bother writing out each complete item beside each item number in this situation. The complainant will get a listing of these items with the other case s findings anyway.)

Appendix A - 9

Examples for Referencing the Findings on Companion Cases:

Item 2: *or if several items are involved use this next example:*

Item 2 through Item 5, Item 7, and Items 10 and 11:

If the Companion Case is still being completed use the following:

The results of the investigation of the safety/health complaint item/s is/are still being reviewed. Once completed, a separate letter will be sent to you relating the findings from safety/health Inspection # _____ which has been conducted in conjunction with this Safety/Health Inspection to address the safety/health item/s detailed in your complaint.

If the Companion Case is already completed use the following:

Findings: For these findings, please refer to the separate letter that was sent to you which relates the results from *Safety/Health* Inspection # *insert case number* that was conducted in conjunction with this *Safety/Health* Inspection to address the *safety/health* items detailed in your complaint.

Or if the companion case hasn't been completed yet, use:

Findings: The results of the investigation of these *safety/health* complaint items are still being reviewed. Once completed, a separate letter will be sent to you relating the findings from *Safety/Health* Inspection # *insert case number* which was conducted in conjunction with this *Safety/Health* Inspection to address the *safety/health* items detailed in your complaint.

Following the formats above for addressing the findings, just say what you found or didn't find and then whether it was cited. When the condition was determined not to be a violation of the standard briefly detail why this the case. Keep your responses streamlined and stick to the complaint items. Don't discuss things like "based on interviews, employer statements, etc., it appeared that ...etc., etc." Don't explain that you are citing an item as serious or other than serious, etc. or get into a discussion of what the gravity factors are and why. All this is superfluous, as we will give them a copy of the citation anyway, if one is being issued. Conclude your response with one of the following catch all phrases depending on the outcome:

1. The confirmed complaint items discussed above that were determined to be in violation of the VOSH standards have been cited.
2. In addition to confirmed complaint items that were determined to be in violation of the VOSH standards, the inspection also identified other conditions that were VOSH violations.

3. Although the complaint items discussed above were not determined to be in violation of the VOSH standards, the inspection did identify other conditions that were VOSH violations.

4. Complaint items or other conditions identified during the course of this inspection that were determined to be in violation of the VOSH standards have been cited.

Then Add ON the following phrase to one of the above sentences if citations were issued:

A copy of the VOSH-2, Citation and Notification of Penalty, which was issued to the employer is enclosed for your review, and should have been posted by the employer at the workplace for at least three (3) days after receipt.

Use this ending if no citations are issued:

Based on our findings as detailed above, we have closed the complaint's investigation file as of the date of this letter, on the grounds that the alleged complaint issue/s - *have been or are now* - being properly addressed. However, if you have additional knowledge regarding the results of this complaint inspection which you believe would dispute our findings, then please send us written notification detailing the basis for your concerns as soon as possible following the receipt of this letter.

Thank you for your interest in assuring a safe and healthful workplace.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

SAMPLE LETTER - Complaint Correction In Progress - Letter Response To Employer

Date

Dear

Thank you for your recent response to our complaint letter. Your letter states that you are making progress toward correcting the conditions. Please send us confirmation, in writing by (insert date), when your corrective action has been completed. Please contact us immediately, if you should encounter any difficulties which you believe might result in a delay in completing your corrective actions by this date.

A copy of your response and of this letter are also being provided to the concerned person/s who had initially reported the hazardous conditions.

Your interest in the safety and health of your employees is appreciated.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

/abc

SAMPLE LETTER -- Interim Response to Complainant Type I

Dear :

In response to your complaint of alleged health and safety hazards at _____ the Virginia Occupational Safety and Health (VOSH) Program has notified _____ requesting that appropriate action be taken to correct the described conditions. Enclosed is a copy of that letter for your information.

As the letter indicates, the employer has been given five working days to respond to these conditions. Please notify me if you have information that corrections and/or modifications have not been made within five working days from receipt of this letter.

We have not revealed your identity to the employer. Upon receipt of any additional information from the employer, a copy of the response will be forwarded to you.

The VOSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity. If you believe that you are being treated differently or action is being taken against you because of your safety or health activity, you may file a complaint with VOSH. You should file this complaint as soon as possible, since VOSH normally can only accept complaints filed within 30 days of the alleged discriminatory action.

Your continued interest in workplace safety and health is appreciated.

Respectfully,

Enclosure

Sample Letter: Interim Response to Complainant Type 2

Re:

Dear :

We have been advised by _____ that the hazards about which you complained are presently being investigated. Enclosed is a copy of a letter from the employer.

VOSH has requested that the employer submit written notification to us when all corrective action has been completed.

A copy of the employer's response will be forwarded to you for your information as soon as we receive it.

Respectfully,

Enclosures

VOSH Compliance Manager
VOSH Compliance Division

/abc

Encl: as noted

SAMPLE LETTER - Violation Correction in Progress - Letter Response To Complainant

Date

Dear

We have been advised by (name of employer) that the hazards which you had asked VOSH to investigate are presently being corrected. The results of the employer's response are enclosed for your information.

The Virginia Department of Labor and Industry's, Division of Occupational Safety and Health Compliance (VOSH), has sent a letter to the employer requesting that they provide the agency with written notification once all of the corrective actions have been completed. A copy of this letter to the employer has been enclosed for your records. The results from the employer's final response will also be forwarded to you as soon as possible upon receipt.

Thank you for your concern for a safe and healthful workplace.

Sincerely,

SAMPLE LETTER -- Complaint Notification to Employer citing Employer s Failure to Respond to Initial Complaint Notification

Re:

Dear :

A letter of complaint alleging unsafe working conditions at your work location was sent to you on _____. In the letter you were asked to respond to the alleged unsafe conditions by _____. We are not in receipt of your response at this time. If we do not receive a letter of response from you within 10 working days, an unannounced inspection may be scheduled to determine if these conditions do in fact exist and if so what measures your company has taken to abate them. Violations found during the inspection that pertain to the complaint items, as well as any other violations found during the inspection, would be cited.

We would appreciate your cooperation in this matter in order that our file on this complaint may be closed.

VOSH selects for inspection a random sample of cases in which employers have indicated satisfactory corrective action. This policy has been established to ensure that employers have actually taken the action asserted in their letters.

If you have any questions concerning this matter, please contact _____ at the above number. Your cooperation in this matter is appreciated.

Respectfully,

Enclosures

SAMPLE LETTER -- Results of Inspection to Complainant

Re:

Dear :

In response to your complaint concerning safety and health hazards at _____, the Virginia Occupational Safety and Health Administration (VOSH) conducted an inspection. That inspection was completed on _____. The results of our inspection of your complaint items are as follows:

(List items.)

Attached for your information is a copy of the VOSH-2, Citation and Notification of Penalty, which was sent to the employer on _____ and should have been posted at the workplace for at least three days after receipt.

If you do not agree with our inspection results, you may contact me for a clarification of the matter. You also have the right to an informal review by VOSH.

This review may be obtained by submitting a written statement of your position to the Regional Director. The Regional Director will provide the employer with a copy of such statement by certified mail. Your identity will be withheld unless you explicitly request that it be revealed.

The VOSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity. If you believe you are being treated differently or action is being taken against you because of your safety or health activity, you may file a complaint with VOSH. You should file this complaint as soon as possible, since VOSH normally can accept only those complaints filed within 30 days of the alleged discriminatory action.

Thank you for your concern for a safe and healthy workplace.

Respectfully,

SAMPLE LETTER - Informal Conference: Need Response From Employer

Date

Name

Address

City, State Zip

Dear :

OPT 1: Since receiving your letter of contest on _____, we have attempted unsuccessfully to contact you by telephone on numerous occasions to schedule the informal conference that you requested in your letter. If we have not heard from you in three weeks, we will proceed with the handling of your contest. However, you need to be aware that without an Explanatory Letter of Contest detailing the reasons for your contest and which provides additional information you wish us to consider regarding our inspection results, that it is unlikely that a contest review will change the initial findings.

OPT 2: Pursuant to the Informal Conference which we held with you on _____, you requested time to think over our proposed Settlement Offer to reduce the Penalties from _____ to _____ and agreed to contact us regarding your decision within the next couple of weeks. Since then we have attempted unsuccessfully to contact you on numerous occasions to learn what you have decided regarding our proposal. Please contact us and advise if you wish to accept our offer or wish to continue your contest. If you do decide to continue your contest, we will need you to provide us with an Explanatory Letter of Contest along with any supporting documentation you wish us to consider on your behalf.

If we have not heard from you by (2 weeks), we will proceed with the handling of your contest. However, you need to be aware that consideration of your contest by our Central Office in Richmond will be based upon the initial penalties as issued and that any proposed Settlement Offer tendered by the Central Office may not reflect any previous offers made. You should also be aware that if you do not provide any additional information you wish us to consider regarding our inspection results, that it is unlikely that a contest review will substantially change the initial findings. Please contact us in writing by the above date and advise us what steps you wish take regarding this inspection. If we have not heard from you by this date, we will forward your case file to Richmond for review.

Please contact us in writing by the above date and advise us of the action you wish take regarding this inspection. If we have not heard from you by this date, we will forward your case file to our Central Office in Richmond for review.

Please call me at _____, Ext. _____ if you have any questions.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

SAMPLE LETTER -- Commonwealth Attorney-Notice of Employer Contest Letter

Date

COMMONWEALTH ATTORNEY

Address

City, State Zip

Dear :

Pursuant to 40.1-49.4E of the Code of Virginia, "the Commissioner [of Labor and Industry] shall immediately notify the Commonwealth's Attorney for the jurisdiction wherein the violation(s) is alleged to have occurred...."

The purpose of this letter is to notify you that _____ has issued a notice of its intention to contest the Virginia Occupational Safety and Health (VOSH) citation(s) issued by the Virginia Department of Labor and Industry.

Please see the attached notice of contest received from the company. Further information will be sent to you if the contest is not withdrawn or settled.

We appreciate your assistance with our VOSH contested case.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

Attachment

SAMPLE LETTER -- Response To Employer After Last Day To Contest

Date

Name

Address

City, State Zip

Dear :

This letter is in reference to your phone message of (date) at _____ a.m./p.m. to arrange an informal conference for Inspection Number _____ and is to confirm the content of our subsequent conversation on (date) at _____ a.m./p.m. regarding your request.

I fully appreciate the difficulties that small companies may encounter when dealing with governmental agencies such as ours and understand that some of the requirements may be initially confusing. In fact, this is the reason our agency's inspectors give a detailed explanation of the employer's rights and responsibilities to the employer at the conclusion of each inspection, as well as a copy of the Closing Conference Guide. It is also the reason that citations are sent by certified mail and include additional instructions to the employer which again explain the employer's rights.

Regrettably, (date) was your company's last day to request an Informal Conference to discuss and/or to contest the citations and penalties that were issued. This date is the fifteenth working day following your company's certified receipt of the citations on (date). By delaying after (date) to contact us, the citations and penalties have become a Final Order of the Commissioner and are enforceable as an order of the Circuit Court.

As regards the \$ _____ penalty owed by your company, VOSH is aware of the hardship a significant penalty might create for a small business and is always receptive to any company's efforts to meet their obligations. To this end, a penalty payment plan is available, upon request, which would help to mitigate the financial impact. Please advise me by (date) if you wish to arrange to a payment plan.

Also, for your future reference, I would like to suggest that you take time to read through the Closing Conference Guide our inspector provided to your company at the completion of the inspection and at the cover letter which was enclosed with the citations you received by certified mail on (date). These items explain your rights as the employer in the inspection/ citation process and includes a discussion of when and how to request an Informal Conference and/or to

Appendix A - 21

contest a citation. Many companies find it helpful to take advantage of these options and your company may also wish to do this in any future inspections (whether conducted by State or Federal Agencies) that involve your operations.

Please contact me if you should have any questions or if I can be of any assistance.

Thank you for your cooperation in our mutual efforts to improve workplace safety.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

SAMPLE LETTER - Petition for Modification of Abatement Request Granted - Response To Employer

Date:

Name

Address

City, State Zip

Dear :

I am writing to you in follow-up to your written petition dated _____ in which you requested that VOSH grant an extension of your abatement due date for Citation 1, Item 1a from _____ to _____. Based upon the documentation you provided regarding your need for the extension and upon the fact that no written petition objecting to the abatement extension has been filed with VOSH by any of your employees during the fifteen working day period since you posted your petition, I am writing you to confirm that your petition to extend the abatement due date for this item until _____ has been granted. You are requested to post a copy of this letter granting the abatement extension next to the original citation in a prominent place at or near the location of the violation for your affected employees information.

As we discussed previously, your company must continue take the additional precautions outlined in your request and any others that are necessary to safeguard the safety and/or health of your employees during this extended abatement period. In addition, once you have completed your remaining abatement actions for this item, you will need to send me your completed Abatement Verification Form and your completed List of Corrective Actions Taken, along with your supporting documentation by _____, so that I can close the abatement actions for this item in your inspection case file.

Thank you again for your continuing efforts to achieve a satisfactory abatement of this item and for your cooperation in our mutual efforts to improve workplace safety. Please contact me at _____ if you have any further questions regarding your abatement measures or if I can be of further assistance.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

cc: Employer Representative

Appendix A - 23

SAMPLE LETTER - Petition for Modification of Abatement Request Received - Response To Employer

Date:

Name

Address

City, State Zip

Dear :

As we discussed on _____, I am writing to you regarding your petition dated _____ in which you are requesting that the abatement due date for Citation 1, Item 1a be extended from _____ to _____. Your documentation of your need for the extension as detailed in your letter dated _____ is justifiable. However, before VOSH can actually grant approval for the extension of the abatement period to the new date that your company is requesting, VOSH must wait for a period of fifteen (15) working days following _____ which is the date that you posted a copy of your petition letter and the Certificate Of Abatement Extension Request which I had faxed to you. As we had discussed the VOSH Standards require that these items be posted in a prominent place at or near the location of the violations for your affected employees to review for ten (10) working days to permit them the time to file a written objection to their employer's petition for the extension of abatement within that ten (10) working day period. If no employee objection has been filed by the time this period has expired and received within the fifteen (15) working days from the date that you posted your Petition and your Certificate, then I will send you written notification that your petition to modify the abatement due date has been approved.

During this extended abatement period your company must take the additional precautions outlined in your request and any others that are necessary to safeguard the safety and/or health of your employees.

Thank you for your continuing efforts to achieve a satisfactory abatement of this item and for your cooperation in our mutual efforts to improve workplace safety. Please contact me at _____ if you have any further questions regarding your petition or if I can be of further assistance.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

cc: Employer Representative

SAMPLE LETTER - Dunning Abatement Verification Request To Employer

Date

Re:

Dear :

The Virginia Department of Labor and Industry conducted an on-site Complaint Inspection of your facility on _____. As a result of this inspection, your company was cited for violations and was issued a Notice of Citation and Penalty dated _____. This was initially sent to you by certified mail and was signed for by your company on _____. Based on your company's receipt of these documents, your company's last date to contest the violations was on _____ and your company was required to provide the List of Corrective Actions Taken/Abatement Verification Form that was included with the Citation Package by _____. To date we have not received any response from your company regarding its Corrective Actions.

It is possible that we have not received your abatement package as yet, if you mailed this information to our offices in the past few days or if you forwarded your abatement package with your penalty payment to our central Richmond Offices. Should this be the case, please call me promptly and advise me when you sent the package to us. Alternatively, if you have chanced to overlook sending your abatement package to us, then please submit your completed List of Corrective Actions by mail or fax (_____) as soon as possible so that it will reach our office by (2 calendar weeks) .

Our current records also indicate that your penalty payment has not been recorded as of the date of this letter. Please remit your payment of _____ to "Virginia Department of Labor and Industry", Attn: Accounting Office, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219. Ensure proper payment credit by writing Inspection #_____ on the payment check. An addressed envelope for your payment was provided for your convenience in the original citation package. (Note: If you submitted your payment recently, it is possible that it may not have posted yet. Please advise me should this be the case.) If you have not sent your payment because your company is experiencing serious financial difficulties, then please contact me to advise me of your circumstances, as it is generally possible to make arrangements to establish a Penalty Payment Installment Plan in such situations.

Please contact me in writing on or before _____ and advise me of the Corrective Actions you have taken to abate the items cited. Our agency is required to issue additional citations for violations of the Abatement Verification Requirements (as detailed in the

Appendix A - 25

VOSH Administrative Regulations Manual in parts 307.D and 307.E) and to conduct a follow-up inspection to determine if the abatement is in fact completed, in any circumstance where an employer continues to fail to provide abatement documentation after written contact. If we do not receive your abatement documentation by this time, VOSH will be required to issue a separate citation with a penalty of \$ _____ to your company for failing to provide the required Abatement Verification. Also, if a Follow-up Inspection becomes necessary because an employer fails to provide abatement, and it is consequently discovered that the cited items have remained uncorrected, then the employer may be subject to additional penalties for failing to abate the violation items. (Please be aware that the penalties for Failure-To-Abate violations are severe and start at a minimum of a \$ _____ per violation for each calendar day past the abatement due dates - up to a total of 30 days per violation).

Please contact me at _____, if you have additional questions regarding this inspection.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

*SAMPLE LETTER -- Final Response to Complainant/Case Closed Citing Employer's
Affirmation of Corrective Action Type 1*

Re:

Dear :

_____ has advised me that the hazards you complained about have been investigated. A copy of the employer's letter is enclosed.

With this information, VOSH feels the case can be closed on the grounds that the hazardous conditions have been corrected (or no longer exist). If you do not agree that the hazards you complained about have been satisfactorily abated, please contact us by _____. If we do not hear from you within that time, we will assume that the hazard has been corrected or eliminated and will take no further action with respect to this case.

Your action on behalf of safety and health in the workplace is sincerely appreciated.

Respectfully,

Enclosures

SAMPLE LETTER- Complaint Closed Satisfactory -Letter Response To Complainant Type 2

Date

Dear

In response to your recent investigation request regarding alleged safety/health hazards at (Company name), VOSH has received written confirmation from the employer regarding the completion of the corrective actions that the employer has taken relating to the conditions described in your complaint.

The employer's corrective actions appear adequate, however, if you have additional knowledge regarding the results of this complaint investigation which you believe would dispute the employer's response, then please send us written notification detailing the basis for your concerns as soon as possible upon receipt of this letter.

Your interest in the enhancement of safety in the workplace is appreciated. We did not reveal your identity to the employer.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

/abc

Enclosure

SAMPLE LETTER Final Response Letter to Employer Closing File/No Further Action on Complaint Type 3

Re:

Dear :

On _____, the Virginia Occupational Safety and Health (VOSH) Administration notified you of alleged safety and/or health hazards at your worksite.

Your response to these allegations was received in the Regional Office on _____ .

Based on our review of the information you provided in your response to these alleged hazards, we have determined that our file on this matter can be closed and no further action on this complaint is anticipated at this time.

Please note, however, that the complainant will also be given the opportunity to review the information provided in your response. If the complainant disputes the accuracy of the response, it may be necessary for VOSH to contact you for additional information or documentation of corrective action in order to resolve these issues. In some situations, it may be necessary to conduct an inspection of your workplace.

We appreciate your prompt response to these allegations, and your interest in the safety and health of your employees. Please feel free to contact this office if we can be of additional assistance to you.

Sincerely,

SAMPLE LETTER -- No Citations Issued Letter To Employer Form Type 4

Date

Name

Address

City, State Zip

Re:

Inspection #: _____
Case ID #: _____
Jobsite: _____

Dear :

An inspection of your workplace was conducted under the Virginia Occupational Safety and Health Law on _____. The inspection did not reveal any conditions which we consider to be violations of the standards. **Option A:** This was a partial inspection which means the focus of the inspection was limited to certain potentially hazardous areas, operations, conditions or practices. It is possible, therefore, that inspections of your workplace in the future could result in conditions being found that we do consider to be violations of the VOSH standards. **OR Option B:** Even though this was a comprehensive inspection, it is possible that not all potentially hazardous conditions, operations or practices were observed. Therefore, future inspections of your workplace could result in conditions being found that we do consider to be violations of the VOSH standards.

We appreciate your interest in protecting the safety and health of Virginia's workers and wish to thank you for your cooperation during the conduct of this inspection.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

SAMPLE LETTER -- Final Response To Complainant - Employer Out Of Business

DATE

COMPLAINANT S NAME
ADDRESS

Dear :

In response to your initial investigative complaint on (DATE), concerning safety/health hazards at (NAME OF BUSINESS), VOSH attempted to contact the company owner, (OWNER S NAME), by phone on (DATE), and also sent (HIM/HER) a certified letter requesting a response to the complaint allegations. (OWNER S NAME) did not respond to the initial written request and to subsequent phone contacts, nor has our agency been able to locate (OWNER S NAME) since these contacts.

In accordance with agency policy when an employer fails to respond to reasonable attempts to resolve a complaint investigation, we conduct a formal inspection at the site. This inspection, however, was unable to be completed. The first time the inspection was attempted, during weekly working hours, the establishment was not open. Attempts to confirm this over the phone were unsuccessful, (TIME FRAME AND TIME OF DAY). The inspector then went by the establishment on (DAY, DATE, AND TIME OF DAY), but the business was not in operation.

Based on our current findings, the employer has completely ceased work operations thereby effectively eliminating any further existing employee exposure to the alleged hazards. Therefore, we are closing this investigation request as we are unable to further investigate for existing complaint items in circumstances where the business is no longer in operation. However, if you have reason to believe that employees are still being exposed to these hazards, then please contact us in writing as soon as possible.

Thank you for your concern for a safe and healthful workplace.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

Appendix A - 31

SAMPLE LETTER - Family Information Letter

Date

Name

Address

City, State Zip

Dear :

On behalf of the Virginia Department of Labor and Industry's Occupational Safety and Health (VOSH) Program, please accept my sincere sympathy on the death of your (relative, name).

We are now in the process of investigating the circumstances surrounding your (relative)'s accident to determine its cause. The purpose of the Occupational Safety and Health investigation is to determine whether safety and health violations were involved in the accident. Citations may be issued to the employer as a result of this investigation. We intend to do everything possible with the information gathered to ensure that workplace accidents like this do not recur and that Virginia's workers have the safest working conditions possible.

If you have information that might assist us in our efforts, or if you have questions or concerns about VOSH's policies and procedures, please feel free to contact me at (phone number).

You are also welcome to request copies of the case file, and any penalties or citations issued as a result of our investigation.

Please address all such requests in writing to:

(Name)
Agency Legal Assistant
Commonwealth of Virginia
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Again, I extend my sympathy.

Sincerely,

Compliance Manager

c: case file

SAMPLE LETTER - Medical Examiner Letter Form

Office of the Chief Medical Examiner

Dear :

Pursuant to the provisions of Labor Laws of Virginia, Title 40.1, an investigation is being conducted involving an industrial accident that occurred on _____, in _____.

To assist in our investigation, we request you provide to our agency copies of all reports including any toxicology reports on _____, age ____, a former employee of _____.

We request the report(s) be sent to _____.
We appreciate your assistance in this matter.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

/abc

SAMPLE LETTER -- Response To Inmate or Prisoner Complaint

Date

Name

Address

City, State Zip

Dear :

This letter is being written in response to a complaint you recently made regarding a hazardous condition in your area at the _____ Correctional Center. Your letters were sent to _____ in our _____ office, and he in turn forwarded them to this office which is the jurisdictional area for the _____ Correctional Center.

I wish to assure you that the Commissioner takes great interest in all complaints which allege unsafe working conditions. Indeed, complaint-initiated inspections are considered a high priority by the Virginia Occupational Safety and Health (VOSH) Program. However, in accordance with the Code of Virginia (see paragraph below), VOSH is limited as to the actions it can take in circumstances such as yours.

Section 40.1-2.1 of the Code of Virginia specifically provides:

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the State or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Safety and Health Codes Board.

While the Safety and Health Codes Board (the Board) extended VOSH's enforcement authority over "public employees", VOSH regulations are still not applicable to prisoners confined in jails. Section 10 of the VOSH Administrative Regulations Manual defines an **"employee"** as: **"an employee of an employer who is employed in a business of his employer"** therefore, **prisoners confined in jails controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.**

As an agency, VOSH is generally limited to initiating an on-site complaint inspection in response to a formally written complaint from a current employee or from the immediate family of a current employee. All other complaints whether received from a former employee or from other concerned persons regarding unsafe working conditions are generally processed as investigation requests by contacting the employer and sending a letter to the employer that

requests a written response within five working days. Since the circumstances you describe are not related to exposure to unsafe working conditions as a result of being employed by a public employer in a work-release program, your complaint is categorized as an investigation request and an on-site inspection of the condition you have described is not planned at this time.

However, a letter has been sent (see copy attached) to _____, Warden, detailing the hazardous condition which you are concerned about. This letter does not disclose your identity and will serve to bring the alleged hazardous condition to the attention of the institution officials for their consideration and possible corrective action if warranted.

Please note also that VOSH, as a state agency, is not authorized to represent private individuals in personal claims. VOSH is responsible for conducting safety inspections and accident investigations to determine if employees are exposed to unsafe or unhealthy working conditions as defined by the Virginia Occupational Safety and Health Standards. In the course of these inspections, if it is determined that an employer has violated the VOSH standards, we issue citations to the employer which, depending upon the classification of the violations, may result in monetary fines.

Please contact me, if you have any further questions concerning this matter.

Sincerely,

VOSH Compliance Manager
VOSH Compliance Division

Standardized Information and Optional Recordkeeping Case Outline

Case files for recordkeeping citations to be considered for violation-by-violation penalty procedures shall be set up to group violations, using a numerical code as shown below, followed by the case number of the violation as may be recorded in the optional recordkeeping case outline.

A. Case types are as follows:

INJURY:

- 01--Laceration
- 02--Puncture wound
- 03--Fracture
- 04--Eye injury
- 05--Burn
- 06--Contusion
- 07--Strain/sprain
- 08--Hernia
- 09--Other (major category)
- 10--All other injuries (non-specific)

ILLNESS:

- 11--Dermatitis
- 12--Cumulative trauma disorder
- 13--Hearing loss
- 14--Poisoning
- 15--Respiratory disorder
- 16--Cancer
- 17--Other (major category)
- 18--All other illnesses (non-specific)

- B. For burns, there shall be some estimate of the size of the burn. This can be given in the "Detailed Description of Event" column on the suggested recordkeeping case outline.
- C. Using the suggested recordkeeping case outline or some other appropriate format, include the following types of information for each violation under "Detailed Description of Event":
1. Work relationship.

EXAMPLE: "While working as a welder...."

2. Injury.

EXAMPLE: Employee sprained his left wrist. Employee fractured her right index finger.

3. Basis of recordability: injury or illness.

EXAMPLE: Employee was to take prescription medicine (Naprosyn) for 5 days and received heat therapy on three subsequent visits.

D. Each violation must have:

1. A unique case file number;
2. A way to be identified, either by name or employee clock number;
3. The reason the instance is a violation of the BLS guidelines; and
4. A detailed description of the event (injury or illness).

E. Five guides are included in this appendix and in Appendix C for use in determining recordability:

1. Chart 1. Guide to Recordability of Cases Under the Occupational Safety and Health Act
2. Chart 2. Guidelines for establishing Work Relationship.

(NOTE: The charts are from the BLS September 1986 Recordkeeping Guidelines for Occupational Injuries and Illnesses.)

3. Medical Treatment vs. First Aid Guidelines,
4. A partial list of prescription and nonprescription drugs based on previous recordkeeping investigation history.
5. Physician's Abbreviations Guide

Appendix A - 37

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY AND HEALTH PROGRAM

Employer _____

Address _____

Inspection No. _____

Issuance Date _____

PENALTY INSTALLMENT PAYMENT AGREEMENT

THIS AGREEMENT is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry (Commonwealth) and [Employer] (Employer).

1. The employer shall pay a penalty of \$x (in lieu of the penalties originally proposed in the citation(s))* . The Employer shall pay an initial sum of \$x no later than 15 days after the Employer receives a fully executed copy of this Agreement. The remaining amount of \$x shall be paid in _____ (#) installment payments of \$x each. Each of the ____ (#) installment payments is/are due on the fifteenth (15th) day of each month beginning _____ and ending _____. Check or money orders, payable to the Commonwealth of Virginia, shall be made to:

Accounting Division
Virginia Department of Labor and Industry
Powers-Taylor Building
13 South Thirteenth Street
Richmond, Virginia 23219

The VOSH inspection number shall be noted on each payment.

2. The employer has the option to pay the total penalty due under this Agreement in one lump sum payment of \$x, to be remitted to the address listed in paragraph 1 no later than fifteen days after the Employer receives a fully executed copy of this Agreement.

3. Should the Employer fail to make any payment under this Agreement by the date it is due, without entering into a new payment agreement, the Employer shall be liable for payment of the outstanding balance under this Agreement **plus** any uncollected accrued interest **and** collection costs.

4. The Employer certifies that the violations alleged in the above citation(s) have been abated.

5. As consideration for the modification of the terms of the original citation(s), the Employer agrees to withdraw its original notice of contest filed with respect to the above citation(s) and waives its rights to contest the remaining terms contained in this Agreement.

POSTING

6. The Employer shall post a copy of this Agreement for a period of thirty (30) days at each worksite in Virginia in a conspicuous location where notices to its employees are generally posted.

SETTLEMENT OF CLAIMS

7. **THIS AGREEMENT** is meant to compromise and settle the contested claims that arose out of the above referenced inspection. Pursuant to Va. Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trail of any action to recover for personal injury or property damage sustained by any party. This agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

8. All citations and penalties, as modified above, including all new obligations contained in this Agreement, are a final order of the Commissioner of Labor and Industry.

By: _____
Employer Representative Date

By: _____
VOSH Regional Director Date

* Included only if penalty begin reduced.

(Letterhead)

MEMORANDUM

TO: Commonwealth's Attorney/Attorney General's Office

FROM: Commissioner, Department of Labor and Industry

DATE: ____/____/____

SUBJECT: Contested Case Review; Company Name_____
Inspection #_____

NOTE: This review is conducted solely for the benefit of the Commonwealth's Attorney and/or the Office of the Attorney General, and is protected from disclosure under the Freedom of Information Act by the attorney-client privilege.

Employer's Position: (Summarize the employer's position on the items contested. Attach Informal Conference Notes or Employer letter as appropriate. Continue on separate sheet of paper if more space is needed.)

Compliance Manager's Recommendations: (Continue on Separate Sheet if more space is needed.)

Director's Recommendations: ____/____/____
Date Received

Deputy Commissioner's Decision/Recommendation: ____/____/____
Date Received

Technical Support Recommendations: ____/____/____
Date Received

Commissioner's Decision: (When required) ____/____/____
Date Received

Commonwealth's Attorney/Attorney General's ____/____/____
Date Received

CONSTRUCTION SAFETY AND HEALTH CHECKLIST

The following checklist is a brief overview of common hazards found on a construction site. It is not comprehensive and should be used to supplement necessary hazard recognition by the safety designee which is site specific.

A. General

1. Are employees exposed to any unsafe conditions during their travel to and from their work stations and at their work stations?
 - a. housekeeping (tripping) hazards
 - b. overhead hazards
 - c. improper storage of materials or flammable substance
 - d. electrical hazards
 - e. open sided floors
 - f. floor openings and holes
 - g. unsafe or improperly installed stairs
 - h. inadequate illumination

B. Personal Protective Equipment

1. Are employees wearing required personal protective equipment?
 - a. hard hat
 - b. safety glasses
 - c. safety shoes
 - d. hearing protectors

C. Electrical

1. Are employees protected from electrical hazards?

- a. exposed live electrical parts
- b. GFCI provided or alternatively an assured equipment grounding program implemented
- c. ungrounded electrical equipment
- d. unprotected electrical cords

D. Fire Protection

- 1. Are fire extinguisher(s) provided as appropriate?

E. Flammable and Combustible Liquids

- 1. Are flammable and combustible liquids handled and stored properly?
 - a. safety cans used
 - b. flammable and combustible liquids not stored near exits or work areas

F. Compressed Gases

- 1. Are compressed gases stored and properly handled?
 - a. oxygen stored at least 20 feet from fuel gases
 - b. cylinders equipped with caps
 - c. fuel gases not stored inside a building
 - d. compressed cylinders secured and protected from damage

G. Tools

- 1. Are tools used properly and maintained in a safe condition?
 - a. hand tools in safe condition
 - b. electrical power tools equipped and used with guards
 - c. pneumatic tools and compressors equipped with proper safety devices

H. Ladders

1. Are ladders properly used and maintained?
 - a. no broken rungs or missing steps
 - b. properly secured and erected
 - c. metal ladders not used for electrical work
 - d. job-made ladders properly constructed

I. Scaffolds

1. Are scaffolds properly erected and guarded?
 - a. fully planked
 - b. equipped with guardrails
 - c. set on sound rigid footing

J. Material Storage

1. Are materials properly handled and stored?
 - a. stored in tiers and secured
 - b. not stored in aiseways

K. Material Hoists and Personnel Hoists

1. Are hoists properly erected, enclosed and used?

L. Motor Vehicles and Mechanized Equipment

1. Are vehicles with obstructed view(s) equipped with a back-up alarm or is an observer used to guide them?
2. Is mechanized equipment kept at least ten feet from overhead power lines?

Appendix A - 43

EMPLOYER'S SAFETY AND HEALTH PROGRAM

A. Management Commitment and Leadership

1. Policy statement: goals established, issued, and communicated to employees.
2. Program revised annually.
3. Participation in safety meetings, inspections: agenda item in meetings.
4. Commitment of resources is adequate.
5. Safety rules and procedures incorporated into site operations.
6. Management observes safety rules.

B. Assignment of Responsibility

1. Safety designee on site, knowledgeable, and accountable.
2. Supervisors (including foremen) safety and health responsibilities understood.
3. Employees adhere to safety rules.

C. Identification and Control of Hazards

1. Periodic site safety inspection program involves supervisors.
2. Preventative controls in place (PPE, maintenance, engineering controls).
3. Action taken to address hazards.
4. Safety Committee, where appropriate.
5. Technical references available.
6. Enforcement procedures by management.

D. Training and Education

1. Supervisors receive basic training.
2. Specialized training taken when needed.

3. Employee training program exists, is ongoing, and is effective.
- E. Recordkeeping and Hazard Analysis
1. Records maintained of employee illnesses/injuries, and posted.
 2. Supervisors perform accident investigations, determine causes and propose corrective action.
 3. Injuries, near misses, and illnesses are evaluated for trends, similar causes; corrective action initiated.
- F. First Aid and Medical Assistance
1. First aid supplies and medical service available.
 2. Employees informed of medical results.
 3. Emergency procedures and training, where necessary.

SAFETY AND HEALTH PROGRAM EVALUATION

During all construction inspections the answers to the following questions, at a minimum, shall be obtained and specifically documented in the case file.

1. Does the employer claim to have a safety and health program?
 2. Who is designated to deal with safety and health matters at this worksite?
 3. How often does this person conduct inspections of the worksite?
 4. When was the last inspection conducted?
 5. What hazards were observed during the last inspection?
 6. What actions were taken to eliminate the observed hazards?
 7. What hazards were noted during the VOSH inspection that a competent person as defined in 1926.32(f) should have recognized? (Indicate how many) *
 8. How many of these hazards were in existence at the time of the last inspection? *
 9. What explanation was given for the continued existence of these hazards? (Be specific and indicate who provided the explanation)
 10. If hazards were created after the last inspection how often should inspections be performed? (Explain the response in detail)
- * If a violation of 1926.20(b)(2) is contested the following additional information shall be included in the case file before it is sent to the Solicitor's Office.

A listing of each individual violation and the approximate date it was created.

SAMPLE NARRATIVE #1

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

INSPECTION NARRATIVE

CSHO I.D.: W 2381-032-89
INSPECTION #: 000000000
DATE CASE OPENED: 3/3/89

TYPE INSPECTION: Accident-Fatality

EMPLOYER: Virginia Steel Corporation
6623 Wexford Lane
Richmond, Virginia 23225

BUSINESS TYPE: Steel Erection

INSPECTION SITE: 100 North Fourth Street
Richmond, Virginia 23241

I. BACKGROUND

- A. PURPOSE - This inspection was initiated as a result of a fatal accident which occurred at the inspection site listed above at 9 a.m. on March 3, 1989. The accident was reported to the Richmond Regional Office at 9:30 a.m. on March 3, 1989, by R. E. Lee, Site Superintendent for Virginia Steel Corporation.
- B. WORKSITE DESCRIPTION - Two multi-story office buildings are being constructed on the worksite by Imperial Builders Corporation. The two buildings are joined together by an atrium roof at the sixth floor level of buildings. (See photo #1 at Exhibit 2.)

Virginia Steel Corporation is the contractor erecting the steel beam structure of the building.

- C. INSPECTION HISTORY - Virginia Steel Corporation has been inspected four (4) times in the past three (3) years. Eight (8) citations (6 - Serious, 2 - Other) have been issued to the company. (See Inspection History at Exhibit 7a.)
- D. CONDUCT OF THE INSPECTION

1. OPENING CONFERENCE - The opening conference was held at 1:30

p.m. on March 3, 1989, at the accident site. (See Exhibit 5b for details concerning the opening conference.)

2. WALKAROUND - The walkaround was conducted during the period of March 4-15, 1989. (See Exhibit 5b)
3. CLOSING CONFERENCE - The Closing Conference was held at 10 a.m. on June 2, 1989. (See Exhibit 5b)

II. FINDINGS OF FACT

- A. This accident involved a fall from the atrium roof at the worksite. The atrium roof structure consisted of steel beams with open web steel joists spaced five (5) feet on center across the beams. The structure measures approximately forty-eight (48) feet between the two (2) buildings, eighty (80) feet long at its longest point and is approximately seventy (70) feet above a concrete floor. (See photos #4 through #8 at Exhibit 2.)
- B. The joists had been spaced on the beams of the atrium roof structure but had not been completely welded and the bridging had not been installed. (See Employee Interview Statements at Exhibits 1a thru 1b.)
- C. A bundle of decking had been stored on the joists of the atrium roof. (See photo #5 at Exhibit 2 and Mr. Grant's (victim's coworker) Interview Statement at Exhibit 1b.)
- D. It is normal practice for employees of Virginia Steel Corporation to walk the beams to where the joists are and then sit down on the beam and wrap their safety lanyards around the beams. (See Employee Interview Statements at Exhibits 1d thru 1f.)
- E. It is also normal practice for employees of Virginia Steel Corporation not to tie off before reaching the work area, no matter how high above the ground they are. (See Site Supervisor's Interview Statement at Exhibit 1g.)
- F. On the morning of March 3, 1989, Mr. Lee, site supervisor, instructed Mr. Grant and Mr. Jackson (victim) to continue welding the beams and joists on the atrium roof. (See Interview Statement at Exhibit 1g.) Mr. Grant went to fabricate some steel frames; he last saw Mr. Jackson walking on the second beam. Within minutes of Mr. Grant's leaving, Mr. Jackson fell to his death. (See Mr. Grant's Interview Statement at Exhibit 1f.)
- G. No one witnessed the accident. After the fall, Mr. Jackson's safety belt and lanyard were found hooked across his shoulder and waist. He was not tied off to

the beam and the employer had not provided any other form of fall protection such as a safety net. (See Employee Interview Statements at Exhibits 1d through 1g.)

III. CONCLUSIONS/RECOMMENDATIONS

- A. That a Serious citation be issued for violation of Title §40.1-51.1(a), Code of Virginia in that open web steel joists did not have the bridging installed and were not permanently fastened prior to storing construction loads on the joists, thereby creating an unstable condition, thus exposing an employee on the joist to a 70-foot fall hazard. (See Findings II.B, C, and D above.)

Proposed Penalty - \$300.

- B. That a Serious citation be issued for violation of 1926.20(b)(1). No danger signs were posted indicating an immediate hazard. (See findings II.D and E above)

Proposed Penalty - \$700.

- C. That a Willful citation be issued for violation of 1926.750(b)(1)(ii). A safety net was not installed; the potential fall distance greatly exceeded 25 feet. (See Finding II.G above) (See Section 1 for Willful Justification.)

Proposed Penalty - \$7,000.

(SEE PENALTY CALCULATION WORKSHEETS - Section 1)

SAMPLE NARRATIVE #2

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

INSPECTION NARRATIVE

CSHO I. D.: H0000-000-96
INSPECTION #: 105070555
DATE CASE OPENED: 10/5/89

TYPE INSPECTION: Accident/Fatality

EMPLOYER: Augusta Silo
Route 2, Box 104
Boxer, Virginia 20074

BUSINESS TYPE: Silo Construction and Repair

INSPECTION SITE: Waterside Plantation
Route 250 West (1/2 mile east of Zion Crossroads)
P.O. Box 463
Waterside, Virginia 22900

I. BACKGROUND

- A. PURPOSE - This inspection was initiated as a result of an accident which occurred at the inspection site listed above at 10:00 am on September 7, 1989. This accident resulted in the fatality of an employee, Mr. Joseph A. Smith on September 14, 1989.

The accident/fatality was reported to the Richmond VOSH Regional Office by Mr. J. M. Blackman, Loss Control Consultant for Consolidated Risk Management Service on October 4, 1989 at 10:15 am (20 days after the fatality).

- B. WORKSITE DESCRIPTION - The accident occurred in an Augusta Silo Feed Storage Structure, a silo measuring 80 feet in height and 25 feet in diameter. This structure was one of five (5) silos at the Waterside Plantation. (See Photo #1, Exhibit 2.)
- C. INSPECTION HISTORY - None

D. CONDUCT OF THE INSPECTION

1. OPENING CONFERENCE - The opening conference was conducted with employer representatives on October 5, 1989 at the employer address above. (See Exhibit 5b for opening conference report/Inspection Worksheet)
2. WALKAROUND - The walkaround was conducted on October 6, 1989 at the worksite located on Waterside Plantation. Employer representatives and the farm foreman were present. (See Exhibit 5b for summary of walkaround/Inspection Summary)

Interviews were conducted with the victim's co-workers, employer representatives, farm representatives, and medical experts. (See 1a thru 1d and 4g)

3. CLOSING CONFERENCE - The closing conference was held on October 30, 1989. (See Exhibit 5b)

II. FINDINGS OF FACT

- A. On September 7, 1989, the victim, along with Sam Clark, another serviceman were working to remove a forage unloader from an Augusta Silo Storage Structure at Waterside Plantation. This entailed entering a hatch in the silo measuring 32" x 20" tall. A tunnel approximately 36" in diameter was dug through the silage to allow the workers entry to work on the structure. (See photo's # 7 and 8, Exhibit 2 and employee statement at Exhibit 1a)

The work performed by Smith and Clark was continuing from the previous day. (Exhibit 1a)

- B. Mr. Clark entered the structure first, at approximately 9 a.m., and removed two (2) sections of the unloader arm before exiting the silo at 9:20 a.m. The victim, Mr. Smith then entered the silo at approximately 9:30 a.m. to continue removing the remaining parts of the unloader. (See Employee Interview Statement at Exhibit 1a)

According to Mr. Clark, Smith was wearing a MSA Constant Flow Air Line Respirator. (See photo #6, Exhibit 2 for picture of the respirator worn; see Exhibit 4a for specifications of the respirator) Clark observed Smith through the tunnel as Smith connected a Lugall and began pulling on the unloader chain. His light also was reflecting on the silo walls. At first, work progressed normally, but after approximately 15 minutes, Clark could no longer detect movement on the

part of Smith. (See Exhibit 1a)

- C. Clark attempted to contact the victim by rapping on the steel backbone of the unloader but got no response from Smith. He then informed Gordon Carr, the Site Supervisor, who had arrived at the worksite just after the victim entered the silo, that he could not contact Smith. (See Exhibit 1a)
- D. Mr. Clark and Mr. Carr removed loose feed material which had gathered at the entrance of the silo in the tunnel. The victim was seen by Clark and Carr slumped in the center of the structure; he was not moving. (See Exhibits 1a and 1b)

Mr. Carr attached a length of pipe to a centrifugal blower and blew fresh air into the structure. (See photo #2, Exhibit 2, for a picture of the apparatus used)

Mr. Clark tied a rope around his waist that was attached to the outside of the structure and entered the silo to retrieve Smith. Clark did not wear a respirator since there was none available; he took periodic breaths from the end of the pipe supplied by the blower. (See Exhibits 1a and 1b)

- E. Clark attached a second rope around Smith's legs and with the assistance of Mr. Carr, pulled Smith outside the structure. This occurred at approximately 10 a.m. (See Exhibits 1a and 1b)

Smith was wearing the respirator; it was observed to be functional by Mr. Carr. The hose did not appear to be obstructed or kinked. Smith's face and tongue were observed to be swollen; he was making a gurgling sound in his throat. (See Exhibit 1a)

- F. Mr. Carr removed the respirator from Smith, placed him on his stomach and pumped on his back until he regurgitated some green material and began breathing short breaths at approximately 10:03 a.m. (Exhibit 1a)
- G. The Orange County Rescue Squad arrived at 10:10 a.m. (The squad had been called during the rescue by a farm worker, John Snead.) Upon their arrival, a helicopter was summoned and the victim was transported to the University of Virginia Medical Center. (See Exhibit 1c and 4a)
- H. Mr. Smith lapsed into a coma on September 8, 1989, and his condition continued to deteriorate. His family requested that support be terminated on September 14, 1989; he expired at 8:20 p.m. that evening. (See Hospital Discharge Summary - Exhibit 4b)
- I. Joseph Allan Smith was a 34 year old white male, with no known past medical problems. He was not known to have any drug or alcohol problem. He was 5'9"

Appendix A- 52

tall, and weighed 182 pounds. He wore a full beard. He had worked for Augusta Silo for three (3) months. (See Medical History - Exhibit 4c)

- J. The cause of death according to the autopsy report was hypoxic encephalopathy or a lack of oxygen to the brain resulting in multi-organ failure. The circumstances which lead to the occurrence of the hypoxic event remain undetermined. (See autopsy report - Exhibit 4c)
- K. According to a statement from Dr. Sheets, (Exhibit 4d) one of the pathologists who assisted in the autopsy:
- (1) Heat stroke was not likely based on the victim's body temperature at admission and the fact that there was no mention of treatment for heat stroke by the emergency personnel. (The body temperature upon admission was 100.4.)
 - (2) A toxic exposure was not likely based on microscopic examination of the victim's lungs and other tissues which displayed no evidence of such an exposure.
 - (3) Hypoxia caused by a pre-existing medical condition was not consistent with the findings that the employee had no previous medical history which would suggest such a condition.
 - (4) Description of the victim during rescue suggests a respiratory asphyxia.
- L. The temperature on the day of the accident was reported to be 76 F. (Exhibit 8) The temperature inside the structure was not measured on the day of the accident, but was measured during the walkaround and was noted to be 101 F. The temperature outside that day was 71 F. (Exhibit 8) Humidity inside the structure was not measured, but would be expected to be near 100% according to the manufacturer. (See Section 6)
- The employer is aware that a hot environment exists inside the structure and recommends that employees stay inside no longer than 10 to 15 minutes before taking a break. (See Augusta Silo Operators Manual - Section 6) Gatorade is always made available at the worksites for employees. (See site supervisor's statement - Exhibit 1b)
- M. The Augusta Silo structure is not intended for continuous employee occupancy; it is designed for the storage of livestock feed. Egress is limited to the small hatch in the side of the structure. It is designed to limit oxygen from the stored feed creating a hazardous atmosphere inside. (See manual - Section 6)

Appendix A - 53

The employer did not require that the atmosphere inside the structure be tested prior to any employee entering. The employer had no equipment to test the atmosphere for percent oxygen, flammability, or any other toxic material. (See employer statement - Exhibit 1d)

The manufacturer indicates that a lack of oxygen and excessive carbon dioxide are the major atmospheric hazards inside a structure. The build-up of toxic gasses such as hydrogen sulfide from decomposing protein, oxides of nitrogen, or carbon monoxide are extremely rare because oxygen is limited inside the structure. (See Manual - Section 6)

The employer assumes an oxygen-deficient atmosphere and requires the use of a respirator of the type worn by the victim. (See statements of employer and coworker - Exhibits 1b and 1d)

- N. The employer did not have written standard operating procedures for respirator use. The respirator used by the victim was stored in the tool box on the back of a service truck with other tools and equipment. The face piece and corrugated breathing tube were partially covered with cattle feed. The quick disconnect valve on the flow control valve had been modified by making the attachment to the air hose permanent. The respirator and compressor used by the victim were tested again on the walkaround and appeared to function satisfactorily. (See Exhibit 1e)

Employees have not been medically screened prior to respirator use. Some training was conducted on February 20, 1989, prior to the victim's hiring. A copy of General Rules for wearing a respirator was given to the victim upon hiring. A signed receipt is filed in his personnel file. (See Section 6)

- O. Employees attending the victim while inside the structure were not trained in first aid, CPR, or rescue procedures. (Exhibit 1a)

A respirator was not available for the attendant outside the entrance to the structure. (Exhibit 1a)

The victim was not wearing a retrieval device or retrieval line. (Exhibit 1a)

- P. The employer did not require the completion of an entry permit to be completed prior to any employee entering the structure. (See Employer and Employee Statements - Exhibits 1a, 1b, and 1d.)
- Q. The employer did not have a written hazard communication program. Material safety data sheets were posted on the bulletin board in the lunch room, but were not available for some hazardous chemicals. No labeling violations were

documented. Training required by the hazard communication standard had not been conducted. (Exhibit 1a, b, and d)

III. CONCLUSIONS/RECOMMENDATIONS

- A. Issue a SERIOUS CITATION for violation of 1910.134(a)(2). No respiratory protection program in place. (Finding II.N.)

Proposed Penalty - \$640.

- B. Issue a SERIOUS CITATION for violation of 1910.146.3. Qualified person not present during confined space entry. (Finding II.O.)

Proposed Penalty - \$810.

- C. Issue a SERIOUS CITATION for violation of 1910.146.3. Atmospheric testing not performed prior to entry into a confined space. (Finding II.M.)

Proposed Penalty - \$810.

- D. Issue a SERIOUS CITATION for violation of 1910.146.5.C. Rescue team not available where confined space has hazardous atmosphere. (Finding II.A thru E)

Proposed Penalty - \$810.

- E. Issue a SERIOUS CITATION for violation of 1910.146.7.A.1 grouped with 1910.146.7.A.2.b. Employees not trained in confined space entry procedures and attendant not trained in first aid and CPR. (Finding II.A thru E and O)

Proposed Penalty - \$810.

- F. Issue a SERIOUS CITATION for violation of 1910.146.9.A.1. Retrieval devices with retrieval lines not worn by entrants into a confined space which has a hazardous atmosphere. (Finding II.O.)

Proposed Penalty - \$810.

- G. Issue a SERIOUS CITATION for violation of 1910.146.9.B. Appropriate respiratory protection not available immediately outside the entrance to a confined space having a hazardous atmosphere. (Finding II.O.)

Proposed Penalty - \$810.

Appendix A - 55

- H. Issue a SERIOUS CITATION for violation of 1926.59(e)(1). No written hazard communication program. (Finding II.Q.)

Proposed Penalty - \$640.

- I. Issue a SERIOUS CITATION for violation of 1926.59(h). Hazard communication training not provided. (Finding II.Q.)

Proposed Penalty - \$640.

- J. Issue an OTHER-THAN-SERIOUS (OTS) CITATION for violation of the A.R.M., Section 11.2.A. Report of fatality not made within 48 hours after the occurrence. (Finding I.A.)

Proposed Penalty - \$320.

- K. Issue an OTHER-THAN-SERIOUS (OTS) CITATION for violation of 1926.59(g)(1). Material safety data sheets not available. (Finding II.Q.)

No Penalty.

(SEE Section 1 FOR PENALTY CALCULATION WORKSHEET)

SAMPLE NARRATIVE #3

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

INSPECTION NARRATIVE

CSHO I. D.: S 9007-000-96
INSPECTION #: 105004968
DATE CASE OPENED: 11/14/88

TYPE INSPECTION: Programmed

EMPLOYER: Framing America, Inc.
105 Woods Avenue
Roanoke, Virginia 22002

BUSINESS TYPE: Picture framing, painting and silk-screening

INSPECTION SITE: 105 Woods Avenue, Roanoke, Virginia, and 1700 Eastport Street,
Roanoke, Virginia.

I. BACKGROUND

- A. PURPOSE - This inspection was conducted as a result of a routine programmed inspection schedule.
- B. WORKSITE DESCRIPTION - Framing America, Inc. operates two worksites; both were inspected.

The first, located on Woods Ave., is an old 6 room, 2 story frame structure; ten employees work there. Two rooms on the first floor are used as an office/display area; one room is used for painting; one room is used for woodworking, framing, and matting. Two rooms upstairs are used for storage.

The second site, located on Eastport Street, is a one story brick warehouse with 2 large open rooms. The facility is used for silk screening only. Three employees work there.

(See Photos # 1, 2, 3, 4, 8, and 9 - Exhibit 2)

- C. INSPECTION HISTORY - Framing America, Inc. was inspected by Industrial Hygienist, Joe Valley, in January, 1985 as a result of a complaint. Four serious citations related to the company's respirator program were issued.

(See Inspection History - Exhibit 7)

D. CONDUCT OF THE INSPECTION

1. OPENING CONFERENCE - The opening conference was conducted with employer representatives on November 14, 1988, at the Woods Avenue site. (see Exhibit 5b for opening conference report/Inspection Worksheet)
2. WALKAROUND - The walkaround was conducted at the Woods Avenue site on November 14, 1988, and at the Eastport site on November 18, 1988.

The co-owners of the business, Jan Joplin and Ed Kendrix, were present during the entire walk-around. Four employees were interviewed at the Woods Avenue site; three employees were interviewed at the Eastport site. (Exhibits 1a thru 1g)

3. CLOSING CONFERENCE - The closing conference was held with the co-owners on November 18, 1988. (See Exhibit 5b for closing conference report/ Inspection Worksheet.)

II. FINDINGS OF FACT

- A. A spray booth area is located on the first floor of the Woods Avenue facility. The spray booth, as it was structured, could not be used for flammable, combustible spray painting operations. According to Mr. Kendrix, only water based paints were being used. I instructed Kendrix that, if in the future, the company intended to use flammable, combustible paints, they would have to follow 1910.107 regarding spray painting.
- B. I took velometer readings at the spray booth. The exhaust system for the water based paints pulls from 50 to 125 linear feet per minute depending on the operator's position at the spray booth. Mr. Kendrix stated that he changes exhaust pipes approximately every three months due to clogging. I recommended that he improve the exhaust system to eliminate this excessive accumulation of material. (See test results - Exhibit 5e)
- C. In the woodworking area at the Woods facility, I observed a partially guarded radial arm saw, mfg. # 11807. Mr. Kendrix stated that the Sears serviceman told him that the existing guard was adequate. (See photos 10 and 11 - Exhibit 2)
- D. Employees in the woodworking area use compressed air for cleaning at 70 - 80 PSI, line pressure. (See photos 12 and 13 - Exhibit 2, and employee interview statements - Exhibits 1a and 1d)

- E. Employees at the Woods Avenue facility are not required to use standpipe or fire extinguishers in case of fire. Employees have been instructed to leave the building immediately and to call the Fire Department. (See Interview Statements - Exhibits 1a, b, c, and d.)
- F. After the Health inspection, the Roanoke County Fire Marshall's office closed the company's old silk screen facility in February, 1989. The company relocated it's silk screen operation from 1560 Eastport Street to 1700 Eastport Street on February 24, 1989. (See Ms. Joplin's statement - Exhibit 1h)
- G. In the printing area of the Eastport facility, I observed a three-prong receptacle on a light table plugged into a receptacle with reversed polarity. (See photos # 14 and 15 - Exhibit 2)
- H. A portable air compressor 930 -20 with a three-prong plug was plugged into a two-prong extension cord in the printing area. (See photos # 16 and 17 - Exhibit 2)
- I. A portable drill, model # BB80A, was missing a grounding plug. Mr. Kendrix stated that the prong had been missing for at least a year. (See photo # 18 - Exhibit 2)
- J. The area surrounding the electrical box in the printing area was used for storage of inks. Appropriate clearance was not maintained. (See photo # 19 - Exhibit 2)
- K. In the finishing area of the Eastport facility, a 2 1/2 inch hose standpipe system was present; however, it was blocked and not functional. Mr. Kendrix stated that all employees are instructed to leave the facility in case of a fire instead of trying to extinguish the fire. (See photo # 20 - Exhibit 2)
- L. The first-aid kit in the finishing room had no supplies. (See photo # 21 - Exhibit 2) Mr. Kendrix stated that there were first-aid supplies located in another room in the facility.
- M. According to employee interviews, the company has no written hazard communication program. (See statements - Exhibits 1a thru 1g)
- N. The Job Safety and Health Poster was not displayed in either of the two facilities.

Appendix A - 59

III. CONCLUSIONS/RECOMMENDATIONS

- A. Issue a SERIOUS CITATION for violation of 1910.231(h) (1).

The sides of the lower exposed portion of the blade of the radial arm saw were not properly guarded. (Finding II.C.)

Proposed Penalty - \$300.

- B. Issue a SERIOUS CITATION for violation of 1910.242(b).

Compressed air used for cleaning at 70 -80 p.s.i.; should be reduced to 30 p.s.i. (Finding II.D.)

Proposed penalty - \$300.

- C. Issue a SERIOUS CITATION for violation of 1910.304(a) (2).

A grounded three-prong plug was attached to a receptacle so as to reverse designated polarity. (Finding II.G.)

Proposed Penalty - \$300.

- D. Issue a SERIOUS CITATION for violation of 1910.304(f)(4).

A three-prong plug was plugged into a two-plug extension cord. The path to ground from circuit was not permanent and continuous. (Finding II.H.)

Proposed Penalty - \$300.

- E. Issue a SERIOUS CITATION for violation of 1910.304(f)(5)(v).

Grounding plug was missing from drill. Exposed non- current carrying metal parts of cord and plug connected equipment which may become energized were not grounded. (Finding II.I.)

Proposed Penalty - \$300.

- F. Issue an OTHER-THAN-SERIOUS (OTS) CITATION for violation of the ARM Section 11.3.A.

The Job Safety and Health Notice was not posted. (Finding II.N.)

Proposed Penalty - \$60.

- G. Issue an OTHER-THAN-SERIOUS CITATION for violation of 1910.38(a)(1) and 1910.160(c)(1).

No Written emergency evacuation plan. (Finding II.K.)

Proposed Penalty - \$0.

- H. Issue an OTHER-THAN-SERIOUS CITATION for violation of 1910.151(b).

First-aid supplies were not readily available. (Finding II.L.)

Proposed Penalty - \$0.

- I. Issue an OTHER-THAN-SERIOUS CITATION for violation of 1910.158(c)(2)(i).

Standpipe and hose systems were not available in case of fire. (Finding II.K.)

Proposed Penalty - \$0.

- J. Issue an OTHER-THAN-SERIOUS CITATION for violation of 1910.303(g)(1)(ii).

Working space around electrical equipment rated 600 volts was used for storage of inks. (Finding II.J.)

Proposed Penalty - \$0.

- K. Issue an OTHER-THAN-SERIOUS CITATION for violation of 1910.1200(e)(1).

Employer did not have a written hazard communication program. (Finding II.M.)

Proposed Penalty - \$0.

(SEE PENALTY CALCULATION WORKSHEETS - Section 1)

Appendix A - 61